

September 11, 2020

The Hon. Chief Justice Tani Gorre Cantil-Sakauye and Hon. Associate Justices
Supreme Court of California
350 McAllister Street, Room 1295
San Francisco, CA 94102-4797

Re: ***Amicus Curiae Letter in Support of Petition for Review***
Pico Neighborhood Association, et al. v. City of Santa Monica
California Supreme Court Case No. S263972
Second District Court of Appeal Case No. B295935
Los Angeles Superior Court Case No. BC616804

Dear Chief Justice and Associate Justices of the California Supreme Court,

The California Latino School Boards Association (CLSBA) and the California Association of Black School Educators (CABSE) respectfully submit this *amicus curiae* letter, pursuant to rule 8.500(g) of the Rules of Court, to urge this Court to review and reverse the Court of Appeal's decision in *Pico Neighborhood Ass'n, et al. v. City of Santa Monica* ("Pico"). If that decision is allowed to stand, it would eviscerate the California Voting Rights Act ("CVRA"), and with it the voting rights of millions of Californians, and fundamentally alter anti-discrimination law to prevent all but the most obvious and egregious racial discrimination from being redressed by the courts. Already, the Court of Appeal's decision in *Pico*, has sewn confusion and uncertainty for the school districts our members were elected to serve.

THE CVRA WORKS, AND THE MEMBERS OF THE CLSBA AND CABSE ARE PROOF

CLSBA is a non-profit organization established in 1979, comprising hundreds of elected school board members throughout California. A majority (55%) of California's six million public school students are Latino,¹ yet only 16% of elected school board members are Latino. As the preeminent organization tasked

¹ California Department of Education, "Fingertip Facts on Education in California – CalEdFacts", www.cde.ca.gov/ds/sd/cb.ceffingertipfacts.asp, Data Updated as of July 9, 2020.

with representing those Latino school board members, CLSBA is committed to ensuring that Latino students' educational needs are met and that they have appropriate role models within their school districts, despite the significant discrepancy between the Latino proportion of students and the Latino proportion of elected officials responsible for their education.

CABSE is a non-partisan organization comprising elected and appointed school officials, administrators and instructors who are committed to advancing equity for Black students in California. CABSE strives to expand the PK-14 educational opportunities available to all students in California, with an emphasis on under-represented and under-served black students, by enacting policies that will strengthen student performance while bolstering opportunities for college and career readiness, to ensure competency and lifelong success.

Many of our members are direct beneficiaries of the CVRA and the inclusive elections it has prompted. Several of our members won their school board positions in the first trustee-area elections (the school district terminology for district-based elections) in their respective school districts. Many of them won their seats in trustee areas that are not a majority Latino. Some were unsuccessful in at-large elections before they prevailed in trustee-area elections. The membership of both the CLSBA and the CABSE are living proof that the CVRA works, and that a majority-minority district is not necessary for a switch to district-based elections to improve minority voting power and even enable minority voters to elect their preferred candidates.

Since its enactment, the CVRA has prompted at least 212 of California's 1,037 school districts to switch to district-based elections – the vast majority of which have done so without the need for litigation. That change in election system has resulted in a significant increase in the number of Latino school board members -- 782 today, compared to 427 in 2002 – a net increase of 83%. According to a study by Caltech professor, J. Morgan Kousser, the number of Latinos on school boards that adopted trustee-area elections grew nearly four times as much as in those that remained at-large.

Having descriptive representation on school boards is critically important for the majority of California public school students who are African American and/or Latino. Because of the paucity of Latino school administrators, and even teachers, it is even more important that students have leaders whom they can model and in which they can see themselves.² The CVRA, because of its broad application, has increased that descriptive representation of Latino and African American students and voters.

The CVRA is also critical to substantive representation on California's school boards. School boards are responsible for decisions that directly affect student performance. School boards decide the distribution of resources in adopting annual school budgets, how and whether to promote diversity amongst teachers and administrators, the selection of superintendents, and the precise approach for bilingual education for the large number of immigrant children. Latino and African American school board members have different experiences than their Anglo colleagues, and often better understand the needs of minority students and minority communities – experiences and understanding that they bring to their decisions as school board

² See M. Neiman, B. Reyes, L. Fraga & D. Krimm "Examining Latino Representation on California's School Boards" (San. Fran. State Univ. 2010)

members. By ensuring African Americans and Latinos a fair opportunity at elected leadership positions, the CVRA also promotes equity and educational achievement for minority students in California.

The implications of a lack of representation on school boards and on school policy are enormous. The CVRA has been the impetus for growth in African American and Latino representation at all levels of government, and that is especially true for local school boards. The enactment of the CVRA effectively removed sizeable barriers to elected office for people of color, and now the appellate court's decision moves us backwards by building back those barriers – barriers that have historically exacerbated the “achievement gap.”

THE COURT OF APPEAL'S DECISION IN *PICO* HAS SEWN CONFUSION AMONG CALIFORNIA'S SCHOOL DISTRICTS

Over the past 18 years, our members have been part of school districts' discussions concerning the CVRA. Those school districts have uniformly understood that to show a violation of the CVRA, a plaintiff need not show that a majority-minority district can be created; rather the key determinative factor is racially polarized voting.³

That understanding of the CVRA is consistent with the plain language of the CVRA, as well as the decisions of three other appellate courts and the legislative history those courts cited. (Elec. Code § 14028(c) [“The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy.”]; *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 669 [“The legislative history of the CVRA indicates that the California Legislature wanted to provide a broader cause of action for vote dilution than was provided for by federal law. Specifically, the Legislature wanted to eliminate the Gingles requirement that, to establish liability for dilution under section 2 of the FVRA, plaintiffs must show that a compact majority-minority district is possible.”]; *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 789 [“[O]ur Fifth District colleagues explained the California Voting Rights Act does not require that the plaintiff prove a “compact majority-minority” district is possible for liability purposes.”]; *Rey v. Madera Unified Sch. Dist.* (2012) 203 Cal.App.4th 1223, 1229.)

Still, the Court of Appeal in *Pico* held the exact opposite, and that has caused a great deal of confusion among California school districts. Several of the school districts our members have been elected to represent are already discussing the prospect of reverting to at-large election systems, in light of the Court of Appeal's decision in *Pico*. While trustee-area elections in those school districts have resulted in the election of Latino board members who prefer the trustee-area elections that brought them into office, those Latino board members are generally still in the minority on their respective boards, and so they lack the

³ See, e.g., Presentation by Mount Diablo Unified School District, available at:

https://www.mdusd.org/pf4/cms2/view_page?d=x&group_id=1552638596120&vdid=0icxi4a270kgldg [“How is the CVRA different from the Federal Voting Rights Act (FVRA)?” The CVRA “eliminates what is known as the ‘geographically compact’ FVRA precondition (i.e., can a majority-minority district be drawn)”]; Presentation by Fremont Unified School District, available at https://www.fremont.k12.ca.us/pf4/cms2/view_page?d=x&group_id=1567840368555&vdid=oi17ac2b5ec7tl [same]; Presentation by Folsom Cordova Unified School District, available at <https://www.fcusd.org/Page/39183> [same]; Presentation to the South Bay Union Elementary School District, available at <http://docplayer.net/141875169-South-bay-union-elementary-school-district-introduction-to-districting.html>.

power to prevent these school districts from regressing back to dilutive at-large elections. Others school districts that were in the process of converting to trustee-area elections have, emboldened by the Court of Appeal's decision in *Pico*, slammed on the brakes.

All of this is resulting in turmoil for school districts throughout California. School districts in which a politically cohesive minority community is substantial, but not so concentrated as to enable the creation of a majority-minority trustee-area, are faced with the question of whether the CVRA requires that they utilize trustee-area elections. In answering that question, those school districts must choose to accept either the plain meaning of the CVRA understood by the courts in *Sanchez*, *Jauregui*, and *Rey*, or the bizarre interpretation of the CVRA advanced in *Pico*. If they choose to rely on the holding in *Pico* – that the CVRA only applies to political subdivisions in which a minority community is concentrated enough to permit the creation of a majority-minority district – they risk being sued by plaintiffs hopeful that the trial court or another appellate panel will disagree with the Court of Appeal in *Pico* in favor of the interpretation of the CVRA by the courts in *Sanchez*, *Jauregui*, and *Rey*. The likely outcome, unless review is granted by this Court, is a flood of litigation, and more conflicting rulings by different intermediate appellate panels; as various courts struggle with how to reconcile the Court of Appeal's decision in *Pico* with the contradictory language of the CVRA.

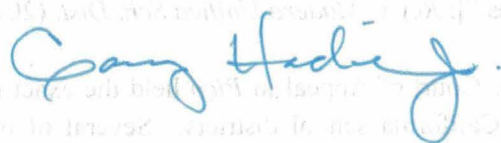
The Court of Appeal's decision has already begun to cause significant turmoil and uncertainty among California's school districts; without review by this Court, that turmoil and uncertainty will continue to grow. The Court of Appeal's decision is wrong and, if not corrected, will prevent minority students and voters from achieving representation in the operation of the school districts on which they depend for their basic education.

Respectfully,



Oscar de la Torre, President

California Latino School Boards Association



Gary Hardie, President

California Association of Black School Educators

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 410 West Arden Avenue, Suite 203, Glendale, California 91203.

On September 15, 2020, I served the following document(s) described as: **AMICUS CURIAE LETTER IN SUPPORT OF PETITION FOR REVIEW** on interested parties in this action as follows:

- Attorney Attorney General - Los Angeles Office - dana.ali@doj.ca.gov
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Document received by the CA 2nd District Court of Appeal.

- Stuart Kirkpatrick - skirkpatrick@gbdhlegal.com
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[X] SERVICE VIA TRUEFILING ELECTRONIC SERVICE SYSTEM

I transmitted via the Internet true copies of the above-listed documents through the Court's Mandatory Electronic Filing System via the TrueFiling Portal, and concurrently caused the above-listed documents to be sent to the recipients listed immediately above, pursuant to the E-Service List maintained by and as it exists on that database.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 15, 2020, at Glendale, California.


Suzana Solis

Document received by the CA 2nd District Court of Appeal.